

Sojitz Europe plc – Terms and Conditions of Sale

I. Scope

1. All quotations and orders which have been accepted by us are exclusively subject to the terms and conditions hereinafter ("Terms and Conditions").
2. An order shall only be deemed accepted if we have confirmed the acceptance of such order in writing or if the goods have been delivered by us.
3. Herewith we object to any adverse conditions of the customer ("Customer") unless we agree to them in writing. We do not accept the Customer's purchase conditions even if we do not object to them explicitly after we have received them.
4. Any amendments or modifications to this contract as well as any collateral arrangements shall be agreed upon in writing.

II. Prices

1. All prices shall be exclusive of VAT.
2. Our offers are made subject to change without notice. If during the validity of the contract the goods are burdened with additional charges, freight costs, taxes, duties, insurances or other additional costs which are usually discharged by the purchase price or should those costs be increased we are entitled to increase the purchase price accordingly regardless of applicable Incoterms rule. This also applies if additional costs arise due to war, riots, strike or comparable reasons constituting force majeure.

III. Payment

1. Payment has to be effected in the currency stipulated in the contract.
2. If not contractually agreed otherwise payment of the purchase price is due upon placing the goods at the disposition of the Customer and the respective notification of the Customer. In case the notification is not made the purchase price is due upon the delivery of the goods according to sec. IV. No. 2 of these Terms and Conditions.
3. In cases of default of payment statutory law (sec. 286 ff. of the German Civil Code) applies unless agreed otherwise.
4. In case it becomes recognizable after this contract has been concluded that the performance of the payment obligation of the Customer will be jeopardized due to the Customer's inability to perform its obligations under this contract, upon our request, the Customer shall submit valuable security which covers the full payment hereunder and is satisfactory to us in form and substance or make the full payment in advance. In this case, we are entitled to stop or suspend the delivery of goods until we receive the said security or payment.
5. The Customer is not entitled to any set-off unless the counterclaims are undisputed or have been legally fixed as valid and binding. The Customer has no right to retain the purchase price unless the counterclaim is based on a breach of the present contract.
6. The payment is deemed to not be effected as long as the payment has not been made in cash, a cheque has not been cleared or a bill of exchange has not been drawn and honoured in full.
7. All bank charges shall be for the account of the Customer.

IV. Delivery and Passing of Risk

1. Our obligation of delivery is subject to delivery or timely delivery, respectively, to ourselves unless the delivery of timely delivery to us could not be effected due to our own fault.
2. Delivery is effected when the goods are in the custody of the Customer or its employees, vicarious agents or other persons who are entitled to exercise the custody on behalf of the Customer. Delivery is also deemed to have been effected if the goods have been offered to the Customer and the Customer is in default of acceptance pursuant to sec. 293 ff. of the German Civil Code.
3. If the delivery of the goods or parts of it is delayed or prevented by any unforeseen incidents outside our responsibility and beyond our control, including but without limitation to export or import prohibitions, other governmental restrictions, war, blockade, revolutions, riots, strikes, blockades, public disturbances, floods, fire, earthquakes, shortage or exceptional price increases of raw materials or transportation we are not obliged to deliver during the obstruction and a reasonable period of time thereafter to restart business again. The Customer hereby accepts the supply of less than the quantity ordered. If the obstruction will presumably not come to an end in a reasonable period of time we are entitled to cancel the contract entirely or partially whereby the Customer has no right to claim loss or damages for breach of contract or late delivery unless in cases of gross negligence or intent.
4. The fulfillment of our delivery obligation requires that the Customer meets its co-operation duties. If those duties are not met we reserve the right to plead non-performance of the contract according to sec. 320 of the German Civil Code. In case of a Free on Board (FOB) or "ex work" contract we reserve the right – at our choice and upon our written notice – to make appropriate shipping arrangements at the Customer's expense and risk or to dispose of the goods otherwise if the Customer does not supply sufficient shipping space in time.
5. We are entitled to make partial delivery and/or to transshipment to a reasonable extent. Each partial delivery shall be separately invoiced and separately paid for unless agreed otherwise.
6. In case we arrange the transportation, transportation within the time stipulated in the contract is subject to the availability of sufficient freight and loading capacity.
7. In case the place of delivery agreed upon is either our premises or the premises of one of our suppliers the Customer has to remove the delivered goods as soon as reasonably possible but not later than five working days after the written notification of placing the goods at the Customer's disposal. After that the risk in the goods passes to the Customer.
8. If not agreed otherwise we do not conclude insurance contracts for the delivery of the goods. If this, however, is contractually agreed upon we conclude such an insurance contract on account of the Customer subject to conditions within our discretion.
9. If delivery is delayed or goods cannot be collected by the Customer for reasons we are not responsible for the Customer bears the storage costs and the risk of transport to another storage facility if such transport is necessary. Otherwise we are only liable for delays in delivery pursuant to sec. VII. of these Terms and Conditions.
10. As soon as delivery has been effected according to sec. IV. No.2 of these Terms and Conditions the risk of accidental loss and accidental deterioration of the goods is passed to the customer. If the goods have to be delivered to another place than the place of performance ("Erfüllungsort") sec. 447 of the German Civil Code applies.

V. Warranties

1. The Customer has to examine the delivered goods and report any defects of the goods to us without undue delay, at the latest within five days, after having received the goods or in case of delayed discovery of hidden defects without undue delay after discovery, according to sec. 377 of the German Commercial Code. A notice of defects of goods has to be submitted in writing with exact details as to type and extent of the defects. Otherwise the goods are deemed to be faultless.
2. In case defects to the goods arise during transportation via an independent freight manager the Customer has to immediately notify the freight manager according to the transportation terms which apply to the transportation in this case.
3. The goods supplied shall be free from defects to the extent they are fit for their ordinary and normally expected use unless agreed otherwise. The agreed condition of goods is exclusively taken from the order confirmation.
4. Where a complaint or a claim has been made in respect of goods proved or alleged to be defective we may suspend further deliveries of goods under this contract until the validity of such complaint or claim has been finally determined. In such an event the applicable delivery date or dates shall be postponed accordingly. We reserve the right to claim compensation for expenditures if the notice of defects was unjustified.
5. Upon a justified notice of defects we shall have the right – upon our choice - to up to three repair attempts or replacement of the goods or parts thereof which are proven to be useless or the serviceability of which becomes seriously impaired due to circumstances occurring before the date of passing of risk. Upon our request the property in goods replaced has to be transferred back to us. If all re-delivery attempts fail or are unreasonable for the customer it shall have the right to either claim a reduction in the purchase price or cancel the contract. Claims for damages pursuant to sec. VII. of these Terms and Conditions remain unaffected.
6. Claims due to defects of the goods become time-barred one year after delivery according to sec. IV. No.2 of these Terms and Conditions. This shall not apply in case we fraudulently concealed the defect and in cases of personal injury, intent or gross negligence, breach of fundamental contractual obligation, in cases of recourse pursuant to the provisions concerning the purchase of consumer goods and for claims pursuant to the Product Liability Act. In these cases the statutory provisions shall apply.
7. The goods may only be returned to us if so agreed upon and our certificate as to weight or quantity of the returned goods shall be final and binding.

VI. Reservation of Title

1. Property in the goods shall not pass to the Customer until the Customer has unconditionally and fully paid to us all outstanding amounts resulting from all existing or future claims of the business relation. The retention of title refers to the acknowledged balance.

2. Until the Customer becomes the owner of the goods the Customer shall store them safely and insured on its premises on our behalf free of charge and separately from its own goods or those of any other person and in a manner which makes them readily identifiable as our goods and marked as our goods with visible name plates stating "property of Eigentum von Sojitz Europe plc". We shall be entitled to inspect the goods at all reasonable times without prior notice.
3. In case the goods which are subject to the reservation of title are processed we are deemed manufacturer according to sec. 950 of the German Civil Code without any obligation and we acquire property in the new product.
4. If the goods under reservation of title are according to sec. 950 of the German Civil Code irrevocably processed together with other materials which are not owned by us we acquire joint property in the new product in proportion to the invoice value of the goods sold under reservation of title in relation to the other materials. If as a consequence of combination according to sec. 947 of the German Civil Code or blending or mixture of goods according to sec. 948 of the German Civil Code other goods are considered to be the main product joint property in the new product will be transferred to us to the extent of the invoice value of the goods sold under reservation of title. The arising ownership rights are deemed to constitute goods with retained title in the meaning of this paragraph.
5. The Customer may sell goods with retained title only in the course of its ordinary business and under the usual conditions as long as it is not in default of payment and provided the claims resulting from the sale are assigned to us in accordance with the subsequent provisions. The customer is not entitled to otherwise dispose of the goods. It must in particular not use them as pledge or other security.
6. The Customer hereby assigns all claims resulting from the resale of goods with retained title including all accessory rights to us in advance. The claims serve to protect our rights in the same manner as the goods to which the title has been retained. We herewith accept the assignment.
7. Where goods with retained title are sold together with other goods not purchased from us the assignment of claim resulting from the sale shall be limited to the amount of the invoice value of such sold goods to which we had retained the title. If the Customer uses goods with retained title for manufacture or assembly the foregoing sentence applies correspondingly to the claim arising therefrom.
8. The Customer is entitled to collect the claims which it has assigned to us unless we revoke his authorisation. We will only revoke the authorisation if there is a legitimate interest, in particular if the customer is in default with payment or insolvency proceedings have been initiated. With such a legitimate interest we are also entitled to disclose the assignment to the Customer's clients at the Customer's expense and collect the claims ourselves. Upon our request the Customer is obliged to inform its customers immediately about the assignment of claims under this contract and to submit all information and documents to us which are required for collecting the claim, in particular the amount of the assigned claims and the names of the debtors.
9. If the value of the securities which have been transferred to us exceeds our entire claims against the Customer by more than 15 % we are prepared, upon the request of the Customer, to release security rights subject to our choice to this extent to the Customer.
10. The Customer has to inform us in writing and without delay about all claims enforced by third parties in respect of goods with retained title or claims assigned to us.
11. If the goods are delivered to another country than Germany the Customer is obliged to take all necessary measures to preserve the retention of title or, if this should not be possible, to provide an equivalent security.

VII. Liability for Damages and Indemnity

1. If claims for damages are raised by the Customer we are liable according to the statutory provisions in so far as our liability results from gross negligence or intent. As far as our liability does not result from an intentional breach of contract our liability is restricted to predictable and typically occurring damages.
2. For a culpable fundamental breach of contract we are liable according to the statutory provisions.
3. If we are in delay with any of our obligations liability pursuant to sec. 287 of the German Civil Code shall be excluded.
4. Our further liability for damages is excluded regardless whether the claim is based on contractual or statutory rights. In particular, this exclusion applies to claims from pre-contractual relationships and claims based on the breach of accessory contractual duties.
5. Any claims of the Customer in cases of personal injury and under a right of recourse pursuant to the statutory provisions concerning the purchase of consumer goods and the Product Liability Act remain unaffected. The Customer has to inform us about any possible case of recourse immediately.
6. As far as our liability is excluded or restricted this shall also apply to any liability of our representatives, staff members, vicarious agents and any person entrusted with fulfilling our obligations under this contract.
7. If possible we assign to the Customer warranty claims which we have against our suppliers.
8. The Customer is responsible for any infringement of patent rights, trademarks, firm names, design rights, copyrights, licences or other intellectual property rights of third persons
 - a) in every country except the country of destination named in the contract,
 - b) in every country if the infringement has been caused at the Customer's request.The Customer is obliged to indemnify us against third persons' claims due to an infringement of the rights mentioned in this paragraph.
9. The Customer shall indemnify us against any claim made by any third party and all damages awarded against us and all costs and disbursements (including solicitor and counsel fees) incurred by us arising from the use of goods by any third party if the goods:
 - a) have been modified or adapted by the Customer or have been combined with other products by the Customer not specifically supplied by us for combination with such goods; and
 - b) have had any process, operation or treatment applied to them unless specifically recommended by us.

VIII. Customer's Breach of Contractual Duties

In case the Customer has abandoned or failed to perform its duties under this contract (including the duty to provide the security or payment within requested time period in accordance with clause III.4) or another contract between the Customer and us, we are – at our choice and upon written notice to the Customer – entitled to one or more of the following:

- a) to terminate the contract
- b) to entirely or partially refuse the delivery of the goods which have been ordered
- c) to take back the goods which have been delivered under reservation of title and to enter the Customer's premises for this purpose after the contract has been cancelled,
- d) to demand from the Customer immediate payment of the purchase price and settlement of all claims,
- e) to sell the goods at conditions of our choice without special notice to the Customer.

IX. Compliance with Laws

The Customer shall at all times conduct its operations and activities in strict compliance with all applicable laws, rules and regulations including but not limited to the anti-corruption regulations. A breach of this clause shall be considered material and we will be entitled to terminate the contract with immediate effect by notice in writing.

X. Assignments

The customer may not assign any right or claim deriving from this contract to third parties without our prior consent.

XI. Notices

All notices referred to in these conditions can be sent by post, fax or e-mail and are deemed to be served seventy-two hours after posting.

XII. Governing Law and Jurisdiction

1. This contract shall be governed by German law excluding the Convention of International Sale of Goods (CISG).
2. The Incoterms applicable at the time at which the order is accepted by us are decisive for the interpretation of the trade terms.
3. Place of jurisdiction is the place of our office which has issued the order confirmation. We shall also have the right to sue the Customer at the place of its registered office.

XIII. Miscellaneous

1. If we waive our right to enforce any of our claims this does not mean that we waive further claims arising from this contract.
2. In case of any interpretation discrepancies between the German and the English version of these Terms and Conditions the German version shall prevail.
3. We are entitled to save and use data within the range of the business relations with the Customer in accordance with the German Federal Data Protection Act.